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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/485,082	04/19/2000	GERHARD WYDRA	P-00.0001	1453

7590 05/22/2002

SCHIFF HARDIN & WATE
Patent Department
6600 Sears Tower
233 South Wacker Drive
CHICAGO, IL 60606

EXAMINER

BARR, MICHAEL E

ART UNIT	PAPER NUMBER
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1762

DATE MAILED: 05/22/2002

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/485,082

Applicant(s)

Wydra et al.

Examiner

Barr

Group Art Unit

1762

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 5/2/02

☒ This action is **FINAL**.

- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-3, 8, 10-25 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-3, 8, 10-25 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☒ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____

☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, filed 5/2/02, have been fully considered and reviewed by the examiner. Claims 1-3, 8, and 10-25 are pending.

The applicant has argued that Olson et al. and Rigney do not teach that the alitized layer has a grain size less than 75 microns and a cavity proportion of 0-40% and the advantages gained therewith. However, since the process suggested by the combination of Olson et al. and Rigney teach the same materials, process steps, and parameters, as those claimed by the applicant, it is the examiner's position that the alitized layer of Olson et al. and Rigney would have inherently had the claimed grain size and porosity characteristics. If this is not the case, then it must be due to critical limitations not being claimed. Please note that Fig. 2 of Olson et al. appears to show the alitized layer being less than 40% porous. The mere recognition of a new property of an otherwise old process does not provide for the basis of patentability (*Allen et al. vs. Coe* 57 USPQ 136).

The applicant has argued that the Floge reference teaches away from the applicant's invention since it desired to machine the intermediate layer. The examiner is not persuaded by the applicant's argument. The Floge reference is merely being applied by the examiner to show the conventionality protecting the surfaces of gas turbine engine components, similar to that of Olson et al., such as the blades and vanes, by applying a MCrAlY layer to the component and then further applying a heat insulating layer of zirconia with CaO and MgO additives. It is the examiner's position that it would have been an obvious modification to the process of Olson et

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al. and Rigney apply an additional heat insulating layer of zirconia with CaO and MgO additives over the MCrAlY layer, with the expectation of providing the additional protective benefits to the engine component, since it is shown by Floge that such additional protective treatment is conventional and known in the art for MCrAlY coated engine components, such as that of Olson et al.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3, 8, and 10-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olson et al. in view of Rigney and GB 2269393 by Floge et al. ("Floge").

Olson et al., Rigney, and Floge are applied here for the same reasons as given above and in paragraph 4 of the previous office action.

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Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Barr whose telephone number is 703-305-7919. The examiner can normally be reached on Monday-Thursday 6:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive Beck can be reached on 703-308-2333. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 or 703-305-5408 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Michael Barr
Primary Examiner
Art Unit 1762

MB
May 21, 2002